SPEECH

OF

HON. GEORGE E. PUGH, OF OHIO,

ON

THE HOUSE AMENDMENT TO THE BILL FOR THE ADMISSION OF KANSAS;

DELIVERED

IN THE SENATE OF THE UNITED STATES, APRIL 2, 1858.

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SPEECH.

The Senate having under consideration the amendment of the House to the bill for the admission of Kansas into the Union as a State—

Mr. PUGH said:

Mr. PRESIDENT: The question before the Senate is not any longer on the passage of the Senate bill—it is on the passage of the House bill. A literal construction of the resolutions of instruction which I have received from the General Assembly of Ohio, and by which my vote was governed on the former occasion, would as much require me to vote against the House bill as the Senate bill. But the emergency is evidently one which the General Assembly did not contemplate, and in which, therefore, I must consult my own judgment and their views, as far as I can gather them. According to my apprehension of what is due to this case, the House amendment is utterly inadmissible. It is a violation, as I understand it, of every principle on which Congress can admit a new State; of every safe precedent; and a violation of every principle heretofore professed by the Democratic party of the United States. It is an unfair bill. It cannot make peace. It can make nothing but disturbance in Kansas, and everywhere else. I shall endeavor to sustain these propositions as the reason why, certainly to my own entire and perfect satisfaction, I shall vote against that bill at every hazard.

The main idea of this proposition, or rather its pretension, is that the Congress of the United States remands the constitution of Kansas to a vote of the people; and what for? Who authorized us to remand that constitution to a vote of the people? Is it for us, the Congress of the United States, to dictate to the States how they shall form and ratify their constitutions? Where have we obtained any such power as that? If we can require it in the case of a new State, we can require it in the case of an old State. Our authority is the same over all of them. The new States are to be admitted on an equal footing with the original States. It is for the people of Kansas, acting through the forms of law, to say in what manner their constitution shall be formed and ratified. They have said it in every manner in which the people can speak. Under the act of August, 1855, they instructed their Territorial Legislature to provide for calling a convention. That was the first act of the people. That Legislature, in obedience to a direct vote of the people, and its members being also elected by the people, proceded to form a law and to enact it, providing for the assembling of a convention and the election of delegates. They omitted any provision requiring the constitution to be submitted to a popular vote; and when the Governor returned the bill without his signature, on the express ground that it contained no such provision, the representatives of the people in the Territorial Legislature, speaking for the people, passed it over his veto, and declared by a two-thirds vote, in each House, that the constitution should be submitted to the people or not, as the convention itself might choose.

Under that charter, in full view of all these circumstances, with a knowledge of the fact that the delegates about to be elected and about to be assembled in convention had perfect and full discretion whether they would or would not submit the constitution, the people chose those delegates. They confided to those delegates a discretion whether the constitution should or should not be submitted. Now, sir, we have had the act and deed of the people at every stage; instructing the Legislature to pass a law; speaking through the Legislature in the form of law; speaking through the Legislature again, when Governor Geary's veto was overruled; speaking by the direct voice of the people when the delegates were elected in June. This convention met. It is the impersonation of the people; it is the will of the people; it is the act and deed of the people; and it speaks the voice of the people. There is no other voice of the people; there can be no other, under our form of representative government. It seems to me a plain proposition; but that it may not stand on my authority, I shall quote again what was said

by Mr. Webster, in his famous argument in the case of Luther *vs.* Borden:

"Let us all admit that the people are sovereign. Jay said that in this country there were many sovereigns and no subject. A portion of this sovereign power has been delegated to Government, which represents and speaks the will of the people, as far as they chose to delegate their power. Congress have not all; the State governments have not all. The Constitution of the United States does not speak of the Government; it says the United States. Nor does it speak of the State governments; it says the States; but it recognizes governments as existing. The people must have representatives. In England, the representative system originated, not as a matter of right, but because it was called by the King. The people complained sometimes that they had to send up burgesses. At last there grew up a constitutional representation of the people. In our system, it grew up differently. It was because the people could not act in mass, and the right to choose a representative is every man's portion of sovereign power."

That is a sentence worthy of Mr. Webster:

"The right to choose a representative is every man's portion of sovereign power. Suffrage is a delegation of political power to some individual."

Again:

"It has been said by the opposing counsel, that the people can get together, call themselves so many thousands, and establish whatever form of government they please. But others must have the same right. We have then a stormy South American liberty, supported by arms to-day, and crushed by arms to-morrow. Our theory places a beautiful face on liberty, and makes it powerful for good, producing no tumults. When it is necessary to ascertain the will of the people, the Legislature must provide the means of ascertaining it. The Constitution of the United States was established in this way. It was recommended to the States to send delegates to a convention. They did so. Then it was recommended that the States should ascertain the will of the people. Nobody suggested any other mode."—7 *Howard's Reports*, pp. 30-31.

Now, sir, I say that the act and deed of the people has been made in every form known to the law up to the assembling of the convention at Lecompton. Unless you are to have what Mr. Webster properly calls a South American liberty, the liberty of those who are the strongest, the liberty of those who choose to take arms in their hands instead of abiding a peaceful arbitration of their differences, there can be no other act and deed of the people than as expressed in the forms of law. I say this convention, when it was assembled, was the representative of the people of Kansas; nobody else was authorized to speak for the people of Kansas; and the convention was authorized to speak, and it was authorized as plainly as if it had been so written in the act providing for the election of the delegates, either to submit the constitution in whole, or in part, to popular ratification. Now, we, not elected by the people of Kansas, not responsible to the people of Kansas, but elected by, and responsible to the people of the other States, propose to take into our hands the formation and regulation of all the political affairs of this new State. We propose to say to this convention that we will define their powers; that we will prescribe for them different powers from those which the people conferred. It seems to me that on no sound principle, with no just regard to the doctrine of a representative Government, with no just regard to the reserved rights and sovereignty of the States, can Congress ever undertake to require the ratification of the constitution of a new State in a different manner from that which the people themselves have prescribed. I do not say it is merely intervention; for that has come to be a catch-word; I say it is trampling under foot the sovereignty and the rights of the States. If you admit Kansas into the Union at all, you must admit her on an equal footing with the original States, and you must do nothing with her, or to her, that you would not do to any State already in the Union.

But we are referred to the act of the last Congress preparatory to the admission of Minnesota, and we are told that is a precedent which elicited no dispute in Congress. It elicited no dispute, because it attracted no attention. I observe, by a reference to the Congressional Globe, that that bill, in its present shape, passed the other House under the operation of the previous question, without ever having been printed. It was brought into the House at the last hour, as an amendment to a former bill; and, having been offered and hastily read, by the dispensation of the previous question it was put through that House. I think we debated it a week on the provision for alien suffrage; but I did not hear a single Senator, either for the bill or against it, make the least allusion to the fact that it required the constitution of that State to be submitted to a vote of the people. I do not know how many Senators were aware of that provision. Perhaps the Senator from Illinois was; I was not. I did not know there was any such provision in the bill until long after the adjournment of Congress. If I had known it, and a motion had been made to strike it from the bill, I should have voted to strike it out of the bill, for I would have required of Minnesota nothing more than had been required in former times of other States. That is the only case to be found in all the legislation of Congress, from the earliest times, in which we have required the constitution of a State to be submitted to a vote of the people. It is a case that passed without discussion; it is a case where there was no debate in either House on the question; and I certainly need not tell an assembly of gentlemen, a majority of whom are lawyers, that no case is authority upon any question that was not argued at the time of the decision.

But, sir, even the Minnesota case is not a precedent for this amendment. In the Minnesota case we substituted ourselves for the Territorial Legislature; we called on the people to elect their delegates, subject to certain general provisions. In this case the people of Kansas have chosen their delegates under totally different provisions, under a direction to them to submit the constitution or not, as they pleased; those delegates have met; their work is complete; and now we are asked not to prescribe an original charter, but to violate the charter which those delegates received directly from the people. That case, therefore, does not warrant this amendment. Then, on what ground is it that we are asked to remand the constitution of Kansas to a vote of the people? Whence comes the suggestion that the convention which met in Kansas was not as legal as the convention which met in Ohio, or in Illinois, or in Missouri, or in any other of the States which have

already been admitted into the Union, and none of which submitted their first constitutions to a vote of the people? On what pretext is founded the argument that we must not receive this constitution? It is said there was a vote taken on the 4th of January, 1858, in which ten thousand majority was given against the constitution. Very well, sir; but was that a legal or an illegal vote? I think it was an illegal vote; I think it has no legal consequence whatever; I think it was simply a signification of so many people, if they were duly qualified, that they wanted a change of the constitution, but they did not express it in the proper form, and those who were opposed to a change being under no obligation to speak on that day, we cannot even arrive at any moral result, much less a legal one, from that vote. But I will take gentlemen on their own ground; let us say that it was a legal vote, let us say that it was a fair vote for the adoption or rejection of the constitution, then if the constitution was rejected, it is at an end; and by what right do you set it on its feet again, and send it back for another ratification? If there be any force in the pretext that the vote taken in January upon the adoption or rejection of the constitution, under the authority of the Territorial Legislature, was legal, it shows that the constitution is at an end, and so much of the House amendment as proposes to recognize the constitution or set it up again for any purpose, is a clear infraction of the will of the people of Kansas. It cannot stand on either leg, therefore.

But, sir, that is not the worst of it. This House amendment does not, in truth, refer the constitution of Kansas back to the people of Kansas. Who are the people of Kansas—I mean the people authorized to vote for or against this constitution? The constitution defines them. One part of the constitution was submitted to the people; one part was ratified by every argument which men can receive: I mean the seventh article. That not only passed the convention, but it passed the vote of the people; and who were they? The constitution tells us:

"At which election the constitution framed by this convention shall be submitted to all the white male inhabitants of the Territory of Kansas in the said Territory upon that day, and over the age of twenty-one years, for ratification or rejection."

They are the people of Kansas; they are the people defined by the constitution of Kansas; they are the body of electors to ratify or reject the constitution; and we have no right to substitute any other body of electors greater or less than that. Is the seventh article to be overturned by the vote of a larger or a smaller number than provided there? If so, we might as well unmake the whole constitution of Kansas. To whom does this amendment remit it? It provides:

"SEC. 4. *And be it further enacted*, That in the election hereby authorized, all white male inhabitants of said Territory, over the age of twenty-one years, who are legal voters, under the laws of the Territory of Kansas, and none others, shall be allowed to vote."

What is the qualification for a voter under the territorial laws of Kansas? That he shall be a citizen of the United States, and have resided six months in the Territory.

Mr. GREEN. That is not all. It also says that he must never have interfered, or been convicted of having interfered, with the execution of the fugitive slave law. If so, he is disqualified.

Mr. PUGH. Better yet. There is a test law; and gentlemen who have been clamoring about test laws for two years are absolutely reënacting them by act of Congress. But my attention was directed to the other point—the voters under the territorial law are to be citizens of the United States who have resided six months in the Territory. When the people of Kansas came to provide for the election of delegates to the constitutional convention, they considered that too narrow a basis of suffrage, and they allowed any man to vote who was a citizen of the United States, and had resided three months in the Territory. You remit this constitution by the House amendment to a body of electors more contracted and less liberal, not only than the constitution itself provides, but less liberal and more narrow than the people of Kansas, through their Legislature, provided in the election of delegates that formed the constitution; and that is popular sovereignty, that is remitting the constitution back to ascertain if it be the act and deed of the people! You first define the people; you pick out certain men; you enfranchise some and disfranchise others; you select your tribunal; you pack your jury; and then you talk about a true verdict! And that is done by Congress, and done in defiance of the constitution of Kansas, and in defiance of the will of the people of Kansas, as expressed in the act under which this convention was elected and assembled.

Is it to secure the rejection of the constitution? No man can pretend that it is to try the question over again; no man can pretend that it is remitting the constitution to the tribunal whence it originated. I say it is packing the jury for the purpose of having the constitution rejected; I do not say that is the purpose of those who voted for it, but I say it is the inevitable consequence of the amendment.

Again, sir, the people of Kansas, speaking through their delegates in this convention, thought it eminently proper that that great vexed question which had disturbed the Territory for four years, which had disturbed the whole Union for four years—that great question in reference to which the legislation of the organic act of May 30, 1854, was supposed to afford a complete settlement—should be separated out of the body of the constitution and put to a separate vote. How is it with this amendment? You require every anti-slavery man, perforce, to vote against the constitution; and that, too, in defiance of the mode of submission provided in the constitution. Any man who is willing to vote for this constitution, except the seventh article, is compelled by the House amendment to vote against the whole of it. He does not have an opportunity to vote for or against the seventh article. He is compelled to vote against the whole constitution. This is the work of the gentlemen who complain of the vote on the 21st of December. They said no man could then vote for or against the seventh

article unless he voted for the constitution. I say that, under this House amendment, no man can vote against the seventh article unless he votes against the whole constitution; the thing is impossible; and therefore I say the amendment is framed in such a manner, whatever the purposes of its authors, that it must inevitably secure the rejection of this constitution.

Then, why not reject it at once? Why travel around all this path? Why pursue this sinuous track? Come to the question. If you say it is not the will of the people; if you claim the right to go behind all the forms through which the people can speak, and reject the constitution, reject it; let us have an end of it, and let us see whether there is any other method by which we can bring Kansas into the Union; but do not let us play fast and loose. Do not let us profess to submit this constitution to the ordeal of a fair vote, when the vote itself is so arranged that it must inevitably be rejected. It would be rejected anyhow under the circumstances; because of the last alternative of this bill. If you had put the ten commandments to a vote under this bill, they would be rejected; and why? The alternative is given in the House bill that, if this constitution is rejected, then there shall be another convention; and every man in the Territory of Kansas, in all the counties, who is an aspirant for membership in the new convention—and we know that there are always about twenty candidates for every office to which one man can possibly be elected—all this body of candidates; all the outs, who are always more than the ins, are interested to defeat the constitution, in order to take the chances of being elected to a new convention, and in order to take the chances of being elected to the Legislature, and to the State offices, which may be elective under the new constitution.

I do not understand it to be pretended in this amendment, as the Senator from Illinois said, that the Lecompton constitution is not the act and deed of the people. That is not pretended; but it is said that:

"Inasmuch as it is greatly disputed whether the constitution framed at Lecompton, on the 7th day of November last, and now pending before Congress, was fairly made, or expressed the will of the people of Kansas."

It might be the act and deed of the people, and not express their will. If I grant a man a power of attorney to draw a check or a note for me, he may draw it, but it may not be my will; yet I have to pay it. He has a proper warrant of attorney to do the act, because I authorized him to act for me. It may not be my will; but it is my act and my deed.

Now, sir, as to the last provision of this amendment. Having submitted this constitution in such a form as inevitably to secure its rejection; having submitted it, not to the people, but to a packed jury, selected in defiance of the law of the convention, and in defiance of the law of the Legislature that called the convention; having selected out the body of electors to which we remand it; having, in addition, required every man who is against the institution of slavery in the new State to vote down the whole constitution; and having offered all the temptations to ambition which can be offered in the shape of new offices as an inducement to vote down the constitution: what is to come next? I take it as positively certain that under this bill any constitution would be rejected. None could pass such an ordeal; for even if these candidates approved it, they would say, "We will make it over again after we get the offices." What is to come next? Then it is said there is to be a new constitutional convention. I think we have had constitutional conventions enough in Kansas, a Territory of about fifty thousand people. She has had three constitutional conventions in three years. We have had Topeka and Lecompton, and this new one, Minneola, now in full blast. They are the hardest people to suit that I ever knew. No, sir; I am willing to take of these three constitutions that which is the most formal and the most regular. I am willing, if Congress requires it, that a new convention of delegates shall be assembled in Kansas to pass upon this constitution, for that is the form which they have provided, and that would be granting them a new trial. But if they fail, I am against any more constitutions from Kansas. Let her stay until she gets the proper population. I voted for the Toombs bill, with a proviso, on that ground. I only assented to it for the sake of peace. I did not believe it was a good precedent to bring a State into the Union with so small a population; and I say now, if this Lecompton constitution, which is the only regular and legal one, is to be rejected in every shape and form, let us dismiss the whole subject out of Congress, and let Kansas wait until she gets a population sufficient according to the ratio prescribed for one Representative.

But, sir, this amendment authorizes four gentlemen to exercise discretion unlimited in time as well as in manner, the Governor, the Secretary, the Speaker of the Council, and the Speaker of the House of Representatives, although two of them are out of office. At an indefinite period in the future, at any time extending throughout the whole territorial life of Kansas, these four persons, two of whom, as I have said, have ceased, or will soon cease, to be officers, are to have the power of calling upon the people to elect delegates, of providing who shall be the officers to superintend the election, and when the delegates shall be elected, and when they shall be assembled in convention; and that convention is to make the constitution, and it is to be an absolute constitution from the start. If they should pass this railroad ordinance which has given some Senators so much trouble, we have no power over it provided they make it part of their constitution. It is never to come back to us; the President is to look at it, and to proclaim the State admitted.

I know there are cases, very good precedents too, in which a constitution has been submitted to Congress, and Congress has been sufficiently satisfied of its republican character, but has remanded it to a convention to alter some one or other of its provisions, perhaps its boundaries, perhaps some clause which was supposed to infringe the Constitution of the United States; but

wherever Congress has remanded a constitution in that way, to be altered or amended in some particular, and afterwards, on compliance with that condition, to admit the State into the Union on proclamation, Congress has had some sight at the constitution. I never knew of their authorizing a constitution to be formed blindly as this bill does. It is for Congress to admit a State, not the President. We have the right to require that certain provisions shall be complied with, and upon that to trust the people; but I am not so willing to trust the people of Kansas in their present condition; and therefore that provision would be eminently objectionable. What will be the result of it? We shall have discharged ourselves from all connection with the subject, and if the constitution to be framed should be like this constitution, against which one party protests, which one party charges with frauds, with outrages, with perjuries of every description, what shall we be told then? We shall hear from the Senator from Illinois [Mr. TRUMBULL] again, that Congress has disclaimed its rightful jurisdiction over the Territories, and that, therefore, all these calamities have occurred. No, sir; let us meet the direct question. If you choose to admit Kansas under the Senate bill, admit her. If you choose to admit her, remanding her constitution to a new convention of delegates, that, as a last resort, would be infinitely better than the House bill. If you will do neither of these, then reject her; or, if you must have her in the Union now, pass the Toombs bill again, or some other bill like it.

For the reasons which I have stated, I am opposed to this hybrid. I am opposed to it in every shape and form. In my judgment it cannot make peace. It is so arranged that it will secure the inevitable rejection of this constitution without any reference to its merits, and, on the other hand, it precipitates the people of Kansas, who have now come to some condition of peace and order, into a new field of anarchy, where there will be no opportunity for us, by any subsequent measure of peace and conciliation, to rectify whatever may have been done amiss. As I said before, it is the most objectionable proposition to me, that has ever yet been submitted to Congress. Believing that it will secure no peace; believing that it will repeat tenfold the anarchy, and disturbance, and civil war which lately prevailed in that Territory; believing that it violates every principle of the party to which I belong; that it violates every principle of representative government; that it asserts and assumes for the Government of the United States a power which it clearly does not possess under the Constitution; that it is a fatal overthrow of the rights and the sovereignty of the States, I am prepared, for one, to vote against it, and to take whatever consequences there may be in store for that vote.